IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9340 OF 2005

Mrs.Deviben Purshottam
Prajapati and Ors. .. Peetitioners
Versus
Mr.Vinod Anandji Prajapati & Ors.. Respondents

WITH

WRIT PETITION NO.9341 OF 2005

Mrs.Kamlaben Kaba Prajapati
and Ors. .. Petitioners
Versus
Vinod Anandji Prajapati & Ors. .. Respondents

WITH

WRIT PETITION NO.9342 OF 2005

Mrs.Januben Pitambar Prajapati
and Ors. .. Petitioners
Versus
Mr.Vinod Anandji Prajapati
and Ors. .. Respondents

Mr.Patil for petitioners
Mr.A.L.Kumar for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 7th Febryary 2006.

P.C.

. Heard Mr.Patil for petitioners and Mr.A.L.Kumar for respondents - caveators.

2. In these petitions under Article 227 of Constitution of India, challenge is to an order of the trial court refusing to implead the petitioner as party defendant in Regular Civil Suit No.591 of 2001.

3. The original plaintiff - respondent herein have filed this suit claiming a declaration that they have become owners by adverse possession in a property which is more particularly described in para 2 of the plaint.

4. In all fairness, Mr.Patil also invites my attention to the plaint in R.C.S.No.493 of 2005 which is also filed in the Court of Civil Judge, Junior Division, Kalyan.

5. R.C.S.No.493 of 2005 is filed for a declaration that M/s.Jiva Bhana & Co., a partnership firm stands dissolved with effect from 15th October 2005 or alternatively from such date as the Court may determined. The prayer in the said suit is also for a direction to the partners in the said firm to furnish accounts.

6. This firm Jiva Bhana and Co., is also party defendant in the Suit in which petitioner seeks joinder viz., Suit No.591 of 2001.

7. After hearing Mr.Patil, I suggested to him that since, both the suits are in the same court and property being common, they can be consolidated and irrespective of the application of petitioners for joinder in the 2001 suit being rejected, appropriate directions can be issued to protect the rights of petitioners. In that event, the application for joinder need not be

pressed.

8. Mr.Patil upon taking instructions from Chetan Prajapati, who is present in court makes a statement that petitioner would not press this application if the contentions raised therein are allowed to be raised at an appropriate stage.

9. Mr.Kumar has no objection to both suits being consolidated and tried together.

10. In my view, following order would meet the ends of justice.

11. R.C.S. Suit Nos. 591 of 2001 and 493 of 2005 are consolidated and should be tried together by the trial court. All contentions of petitioners insofar as merits of the controversy in R.C.S.No.493 of 2005 are kept open. Equally, irrespective of the withdrawal/ dismissal of application for joining petitioners as parties in

Civil Suit No.591 of 2001, it would be open for them to raise contentions as are permissible in law with regard to enforceability and or executability of the order passed in R.C.S.No.591 of 2001, at an appropriate stage.

12. Equally, it would be open for plaintiffs in Suit No.591 of 2001 to counter the same.

12. Petition disposed off. It is made clear that observations made in the impugned order shall not preclude parties from raising above contentions and for the trial court to decide the same on merits and in accordance with law.

(S.C.DHARMADHIKARI, J)